

**STATE OF MARYLAND  
JUDICIARY**

**Policy on Grievances, Disciplinary Appeals, and  
Whistleblower Reprisal Protections**

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**I. PURPOSE**

To establish a uniform policy for complaints, grievances, disciplinary appeals, and reprisal protections for whistleblowers in the Maryland Judiciary. This policy does not apply to the involuntary termination of employment and rejection on probation of regular employees and employees on initial probation, for which a separate policy applies.

**II. DEFINITIONS**

**A. Administrative Official:**

1. The Clerk of Court for the Court in which the employee works;
2. The Administrative Clerk of the District Court for the District in which the employee works; or
3. The director of the respective department or office within the Courts of Appeal, the Administrative Office of the Courts, the District Court Headquarters, or the Court-Related Agency in which the employee works.

**B. Appeal** - A formal request by an employee for a review of a disciplinary action taken against the employee or a review of a decision reached at Step One or Step Two of the grievance/appeal procedure.

**C. Appellant** - An employee who is appealing a disciplinary action or a decision reached at Step One or Step Two of the grievance/appeal procedure.

**D. Conference Officer** - The person designated to conduct a conference and to reach a decision on the merits of a grievance or appeal based on the information, evidence, and testimony presented to him or her during the course of the grievance/appeal process.

**E. Day** - A scheduled work day, not a calendar day.

**F. Disciplinary Action** (for purposes of this policy)

1. May include:
  - (a) written reprimand;
  - (b) suspension without pay;
  - (c) suspension with forfeiture of accrued leave days;
  - (d) denial of a pay raise/step increase; and
  - (e) involuntary demotion.
2. Does not include:
  - (a) memorandum of instruction;
  - (b) counseling memorandum or counseling session;
  - (c) written warning of disciplinary action;
  - (d) verbal reprimand;
  - (e) leave without pay, when the employee is absent without approval (However, an employee who is placed on leave without pay for an unapproved absence may be subject to disciplinary action.);
  - (f) administrative leave;
  - (g) termination of employment (There is a separate procedure to request a review of termination of employment.); and
  - (h) any issue subject to the grievance process.

**G. Employee** - Any person employed by the Judiciary of Maryland except:

1. A Judge, Master, or Law Clerk;
2. Any employee in pay grades T18 and T19, or in a flat scale position, or in the Judiciary's Senior Management Pay Plan;
3. A Clerk of the Circuit Court or Chief Deputy Clerk of the Circuit Court;
4. A Deputy Administrative Clerk of the District Court;
5. A District Court Commissioner;
6. Any individual employed as a special appointment, consultant, contractual employee, or on a temporary basis; or
7. An employee who is on initial probation.

**H. Employee Representative** - Any individual or designated employee organization representative chosen by the employee to represent that employee in the grievance or appeal process.

**I. Grievance**

1. An employee's formal written complaint, including a whistleblower complaint, not resolved at an informal discussion, which alleges a specific injury, injustice or wrong suffered by the employee as a direct result of the wrongful application or lack of application of a policy, regulation, procedure, or rule over which the employer has control.
2. A "grievance" does not include a dispute about the following:
  - (a) a pay grade or salary range assigned to a classification;
  - (b) the amount or effective date of a cost-of-living adjustment or statewide pay increase;
  - (c) the establishment of a classification;
  - (d) the establishment of classification standards;
  - (e) staffing decisions, including assignment, reassignment, or transfer, when the new assignment is within the same jurisdiction and does not involve a decrease in the employee's salary;
  - (f) a midyear performance review;
  - (g) an end-of-year performance appraisal, unless the dispute concerns an "Overall Needs Improvement" or "Overall Unsatisfactory" rating;
  - (h) allegations of discrimination or sexual harassment (Allegations of discrimination and sexual harassment will be handled in accordance with the procedures set forth in the appropriate policy);
  - (i) classification decisions related to individual employee positions (Disagreement with a designated job classification for the employee's position or another employee's position);
  - (j) items included under F. 2. (a) through (g) of this policy.

**J. Grievant** - An employee who files a grievance.

**K. Management Representative** – Any individual designated by the Executive Director of Human Resources (hereinafter referred to as the Executive Director) to assist and/or represent management during the grievance or appeal process.

**L. Mediation** – A structured non-coercive process where an impartial third party (or parties) assists disputing parties in resolving the dispute through

discussion of the issues, interests, and desires of each party and possible options for resolution. Ideally, the result will be an agreement by the disputing parties that resolves the dispute.

- M. Review Panel** - A three-person panel chosen at Step Three of the grievance/appeal procedure to review a decision reached at Step Two.
- N. Supervisor** - Any individual designated as a supervisor by the appropriate Administrative Official.
- O. Unit** - A Circuit Court, a district in the District Court, a department or office within the Courts of Appeal, the Administrative Office of the Courts, the District Court Headquarters, or a Court-Related-Agency.
- P. Whistleblower Reprisal Complaint** – A complaint filed as a grievance by an employee that he or she suffered reprisal as a direct result of disclosing information as defined by Section V of this policy.

### **III. SCOPE**

This policy applies to all employees of the Judiciary as defined in Section II, G. unless the issue is a whistleblower complaint, in which case the policy applies to any employee of the Maryland Judiciary.

### **IV. POLICY STATEMENT**

Complaints, grievances, and disciplinary appeals by employees of the Judiciary will be governed by this policy. This policy provides for the fair and impartial consideration and equitable disposition of grievances and disciplinary actions. Complaints should be settled, as often as possible, by managers, supervisors, and employees before they become grievances or appeals. When relief is sought by an employee, the matter will be handled expeditiously, fairly, and without prejudice. It is the responsibility of the employee and management to attempt to resolve any grievance or appeal at the lowest possible level.

An employee has the right to be assisted by an employee representative and shall notify management of that choice. In preparing a grievance or appeal, an employee may contact the Judiciary Human Resources Department for interpretation of this policy. An employee with a grievance or appeal may present his or her grievance or appeal free from coercion, discrimination, interference, reprisal, or restraint.

No employee shall suffer any loss of pay for reasonable time spent investigating,

processing, or testifying in any step of this policy. No overtime will be paid in conjunction with preparing for a grievance or appeal hearing. All employees, supervisors, and management personnel are charged with the responsibility of making every effort to resolve any difference of opinion informally and amicably and without resort to formal proceedings, if possible.

## **V. WHISTLEBLOWER REPRISAL PROTECTION**

- A. A supervisor or Administrative Official may not take or refuse to take any personnel action as a reprisal against an employee solely because the employee:
  - 1. Discloses information that the employee reasonably and in good faith believes evidences:
    - (a) an illegal abuse of authority;
    - (b) gross mismanagement;
    - (c) gross waste of money;
    - (d) a substantial and specific danger to the public health or safety;
    - (e) a violation of law; or
  - 2. Seeks a remedy provided under this policy following a disclosure under item one of this section.
- B. This subsection applies to a disclosure that is specifically prohibited by law **only** if that disclosure is made exclusively to the Office of the Attorney General. Upon receiving such a disclosure, the Office of the Attorney General will act in accordance with Maryland State law:
- C. Should the Chief Judge of the Court of Appeals receive a confidential report from the Office of the Attorney General describing a violation of this section, he/she may:
  - 1. Order the removal of any related detrimental information from the complainant's personnel records;
  - 2. Require that the complainant be reinstated or any disciplinary action be rescinded or modified;
  - 3. Award back pay up to the date of the violation;
  - 4. Direct that appropriate disciplinary action or other action be taken;
  - 5. Take any other remedial action consistent with this section.

## **VI. GENERAL INFORMATION**

### **A. STANDARD OF PROOF and BURDEN OF PROOF**

The standard of proof is a preponderance of evidence. A preponderance of evidence means to prove that something is more likely so than not.

If the evidence is evenly balanced on an issue, then the finding on that issue must be against the party who has the burden of proof.

Management has the burden of proof in disciplinary appeals.

The employee has the burden of proof in pursuing a grievance.

### **B. INFORMAL DISCUSSION**

Each employee and management are required to make all reasonable efforts to resolve a complaint through informal discussion before resorting to the grievance/appeal procedure. The informal discussions should begin with the lowest level supervisor having authority to resolve the complaint. Each subsequent discussion, if necessary, will involve the next higher level supervisor. The assistance of the Human Resources Department in the informal discussion process may be requested by either party. The informal discussion process cannot be waived.

Attempts to resolve a complaint through informal discussion will end when the complaint is resolved or when it is determined that it cannot be resolved through informal discussion.

A Statement of Grievance/Appeal may be returned to an employee if, upon review of the statement, it is determined that this requirement for informal discussion has not been met.

### **C. MEDIATION**

An employee may request mediation, in lieu of proceeding with the grievance or appeal process, in an attempt to resolve a dispute. Mediation also may be requested by either party in an attempt to resolve non-grievable disputes, management/employee disputes and employee/employee disputes.

Participation in mediation is voluntary. Mediation will proceed only if all parties to the dispute are willing to participate in the mediation process. Agreements reached during mediation are binding on all parties.

**D. EMPLOYEE REPRESENTATIVE**

An employee may designate any one individual, including an attorney, an employee organization representative, or another employee, to assist and/or represent the employee in the grievance/appeal process.

**E. MANAGEMENT REPRESENTATIVE**

The Executive Director may designate any one individual, including an attorney, to assist and/or represent management in the grievance/appeal process.

**F. FORMS/RECORDS**

The grievance or appeal shall be filed on a form prescribed by the Executive Director. The Administrative Official's office or the Human Resources Department shall provide forms for the filing and processing of a grievance or appeal.

When filing a grievance or appeal, the employee shall state specifically and definitely the issues of fact and law that the employee believes support the grievance or appeal and shall state with sufficient particularity each ground of the grievance or appeal to enable management to respond to each ground. Any ground not specifically stated in the original grievance or appeal cannot be raised in any later step of the grievance/appeal procedure. The employee also shall state the specific remedy he/she seeks in the matter. **Failure to state specifically and definitely the issues of fact and law, or a remedy, will be grounds for dismissing the grievance or appeal.**

The conference officer or review panel shall forward written decisions to the Human Resources Department for distribution to all parties (See Section VI for time limits.). Step Two conferences may be audio recorded and the recording maintained with the official written records of the grievance or appeal. Records of grievances and appeals shall be maintained by the Human Resources Department, in accordance with the records retention schedule.

**G. FAILURE TO APPEAL OR RESPOND**

Failure of the employee to file a grievance, appeal a disciplinary action, or appeal a decision within the time limits set forth in this policy, or to appear within 15 minutes of the starting time set for a Step One or Step Two Conference without good cause as determined by the conference officer, constitutes acceptance of the action or decision.

Failure of the Judiciary to respond to a grievance or disciplinary appeal, or render a Step One or Step Two decision within the time limits set forth in this policy, constitutes a denial of the grievance or appeal which the employee may appeal. (See Section VI for time limits.)

#### **H. CONSOLIDATION OF SIMILAR GRIEVANCES**

The conference officer or review panel may consolidate similar grievances or appeals by more than one employee, or more than one grievance or appeal filed by any one employee.

#### **I. POSTPONEMENTS, EXTENSION, AND WAIVER OF TIME LIMITS**

The conference officer at Steps One and Two may grant a postponement to a specified future date upon a request by either party, or on his or her own motion, and for good cause. If any individual responsible for preparing a decision of a grievance or appeal at any step cannot comply within the time specified in this policy because the individual is on approved leave for 3 or more days, the period for the decision shall be extended by the number of days of the approved leave, up to a maximum of 15 days. The employee shall be notified of the extension.

By agreement of all parties, time limits set out in this procedure may be waived.

#### **J. ISSUES TO BE CONSIDERED IN GRIEVANCES AND APPEALS**

##### **1. Disciplinary Actions**

At issue is whether the disciplinary action was justified and taken in compliance with applicable laws and Judiciary policies.

##### **2. Grievances**

At issue is whether there was a wrongful application, or lack of application, of a law, policy, regulation, procedure, or rule, and whether, as a direct result thereof, the employee suffered an adverse action.

#### **K. CONFERENCES and REVIEW PANEL CLOSED TO THE PUBLIC**

Proceedings under this policy are confidential. As such, they shall be closed to the public unless the grievant/appellant and management waive the confidentiality of the Step One or Step Two Conference.

Unless the confidentiality is waived, attendance at the Step One or Step Two



Conference is restricted to the following: the grievant/appellant and his or her representative; one supervisor, manager, or Administrative Official and management's representative; witnesses; and the conference officer. A waiver of confidentiality does not apply to Step Three. Attendance at Step Three proceedings is restricted to the three panel members.

At his or her discretion, the conference officer may allow a limited number of observers to attend the Step One or Step Two Conference for bona fide and verifiable training purposes, provided the grievant/appellant and management have no objections.

The conference officer, at his or her discretion, and on his or her own initiative or at the request of the grievant/appellant or management, may sequester witnesses.

## **VII. STEPS IN THE GRIEVANCE/APPEAL PROCEDURE**

### **A. STEP ONE: CONFERENCE**

If an employee has been unable to resolve a complaint through informal discussion, the employee may present a grievance or an appeal of a written reprimand to the Administrative Official in authority over the employee. The grievance or appeal must be submitted within 15 days after the basis for the complaint is known or should have become known to the employee.

The Administrative Official, as the conference officer, shall hold a conference with the employee, and the employee's representative (if there is one), within 10 days after receipt of the grievance or appeal and shall render a written decision within 5 days after conclusion of the conference, which may be given to the employee or mailed to the employee's home address. The conference officer is authorized to decide all procedural matters raised prior to and during the conference, and all matters affecting the conduct of the conference.

By agreement, the parties may bypass Step One.

### **B. STEP TWO: CONFERENCE**

An employee's written appeal of a Step One decision, or an appeal of a disciplinary action other than a written reprimand, must be filed with the Executive Director or designee. The appeal must be postmarked or received in the Human Resources Department no later than 5 days after the Step One decision or written communication of the disciplinary action was mailed or given to the employee. A conference shall be held within 15 days after receipt of the

written appeal.

For an appeal filed by an employee of the District Court, an Administrative Clerk not in authority over the employee, shall be designated by the Executive Director or designee to conduct the conference. For an appeal filed by an employee of a Circuit Court, a Clerk of Court not in authority over the employee, shall be designated by the Executive Director or designee to conduct the conference. For an appeal filed by an employee of a department or office within the Courts of Appeal (COA), a Court-Related Agency (CRA), or the Administrative Office of the Courts (AOC), a COA/CRA/AOC manager not in authority over the employee, shall be designated by the Executive Director or designee to conduct the conference.

The designated individual, as the conference officer, is authorized to rule on all procedural matters raised prior to and during the conference, on all matters affecting the conduct of the conference, and to decide the case. Evidence may be presented and witnesses may testify on behalf of the employee or management at this conference. The conference officer shall render a written decision within 10 days after conclusion of the conference and submit the decision to the Executive Director or designee for distribution to the employee and the employee's Administrative Official.

### **C. STEP THREE: REVIEW PANEL**

If an employee chooses to appeal a Step Two decision, he or she must file a written appeal with the Executive Director (or designee). The appeal must be postmarked or received in the Human Resources Department no later than 5 days after the Step Two decision was mailed or given to the employee. The written appeal must designate an employee to serve on the review panel and it must specifically and definitely identify the issues of fact and law that the appellant believes would support reversal or modification of the Step Two decision. An employee shall not be designated to serve on the review panel if he/she: is employed in the same section of a unit as the appellant; is a relative of the appellant; serves as an officer or representative of the employee organization representing the employee; or will be directly affected by the panel's decision.

Upon receipt of a written appeal, a review panel shall be convened within 15 days consisting of the following members: for appeals filed by employees of the COA, AOC, Circuit Courts, and CRAs, the members shall be the employee's designated member, a member designated by the Executive Director or designee, and a member designated by the State Court Administrator.

For appeals filed by employees of the District Court, the members shall be the

employee's designated member, a member designated by the Executive Director or designee, and a member designated by the Chief Clerk of the District Court.

The member designated by the Executive Director or designee, shall serve as the chairperson of the panel and shall be authorized to decide all procedural matters raised prior to and during the review and shall rule on all matters affecting the conduct of the review.

The review panel shall review the record of the Step Two conference, including the audio recording, if applicable, of the conference and all evidence presented at the conference. No new evidence, witnesses, or oral arguments will be considered by the panel. The panel shall consider the specific and definite issues of fact and law which are identified in the appeal and form the basis for the appeal. The review panel shall render a written decision within 30 days of the conclusion of the review as to whether the Step Two decision is affirmed, reversed, modified, or remand to Step Two is in order, and submit the decision to the Executive Director or designee for distribution to the employee and the employee's Administrative Official. Any dissent opinion may be submitted with the majority decision. A decision at Step Three of this procedure is final and binding on all parties.

#### **VIII. DESIGNEES**

The Administrative Official (for Step One), Executive Director, HR, State Court Administrator, or Chief Clerk of the District Court may designate any individual to serve or act on his or her behalf in conjunction with Section VII of this policy.

#### **IX. INTERPRETIVE AUTHORITY**

The Judiciary Human Resources Department, in consultation with other parties as appropriate, is responsible for the interpretation of this policy.

#### **X. REPLACES FORMER POLICIES**

This policy supercedes and replaces the "Policy on Grievances and Appeals," (Circuit Courts, AOC and Court Related Agencies), effective June 19, 2000, and the "District Court of Maryland Procedure for Grievances and Disciplinary Appeals," effective September 11, 1998.